



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

SFUND RECORDS CTR
2052744

August 11, 2004

Joel O. Darner, II, President
Darner Motor Sales, Inc.
for Darner Motor Sales, Inc.
837 West Main Street
Mesa, AZ 85201-7105

Re: Revision to Omega Chemical Superfund Site *De Minimis* Settlement Offer - Settlement Options

Dear Joel O. Darner, II:

As a result of comments from the *de minimis* potentially responsible parties ("PRPs") for the Omega Chemical Superfund Site, the United States Environmental Protection Agency (the "U.S. EPA" or the "Agency") is modifying the Settlement Offer for all PRPs, including those who have submitted a Signature Page. In order to allow parties an opportunity to consider the revised offer, U.S. EPA is also extending the deadline to accept the Revised Settlement Offer to **September 10, 2004**.

As discussed in the February 6, 2004 Settlement Offer package, the initial Settlement Offer figure of \$12,632 per ton of waste is based on the total estimated cost of site cleanup that includes the base payment and a premium. The premium applied to projected future costs was set at 100%, which is consistent with the U.S. EPA's national guidance for *de minimis* settlements and other *de minimis* settlements across the nation.

EPA is modifying its February 2004 settlement offer to provide *de minimis* parties a cash-out settlement option with re-openers as an alternative to the 100% premium in the February 2004 settlement offer. In the revised settlement, which will be offered to all *de minimis* parties, settling parties will have the opportunity to choose from either a cash-out settlement option that closely mirrors the terms of the initial settlement offer (Option A) or the cash-out settlement option with re-openers if the cleanup costs exceed the current cost estimate (Option B). EPA intends to extend both options to all *de minimis* parties including those who have agreed to settle. Each of these options is described more fully below and in the enclosed letter.

Under Option A, a settling party receives a release from the United States for all present and future liability at the Site by paying its share of the estimated costs in EPA's cost estimate, based upon the number of tons of waste it sent to the Site, plus a 100% premium to cover future Site-related and enforcement uncertainties. Pending final approval by the Department of the Interior ("DOI") and the State of California, Option A settling parties will also receive a release from liability for natural resource damages and response costs from the federal Natural Resource Trustees and a release from liability to the Department of Toxic Substances Control ("DTSC") for response costs incurred by that agency. The addition of this release from liability for natural resource damages and DTSC's costs is the only difference between this Option A and the initial EPA settlement offer.

Alternatively, under the newly created Option B, settling parties would pay less money up front but receive more limited liability releases from the United States with respect to the Site. Under Option B, a settling party pays a 50% premium, compared to the 100% premium under Option A. EPA may require Option B settling parties to pay additional money in the future for Site costs in excess of the cost estimate. Such additional payment(s) may be required at two points in time in the future. One, if the cost estimate used in the Record of Decision ("ROD") to select the final remedy at the Site is greater than the

existing cost estimate used for this *de minimis* settlement, EPA may seek additional payment from settling parties who chose Option B. Two, if Site costs at the time the final remedy is completed, but no later than January 1, 2013, exceed the existing cost estimate used for this *de minimis* settlement, EPA may also seek additional payment.

Enclosed please find a revised cost settlement form showing the Option A and Option B settlement figures. The dollar amounts in both the Option A and Option B boxes reflect the full amount without the 5% discount because EPA did not receive your initial signature page by the May 7, 2004 deadline.

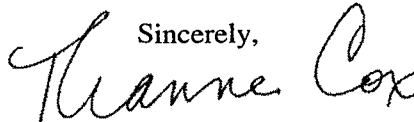
Also enclosed is a revised signature page, where you must indicate your choice of the settlement options. **You must complete, sign, and return the Revised Signature Page to EPA, postmarked no later than September 10, 2004.**

The U.S. EPA is still in the process of reviewing the PRP challenges received from the February 6, 2004 offer letter package. If your challenge has not yet been processed, you should still provide the revised signature page indicating your choice of settlement options. When you receive the results of your challenge, you will have 14 days within which to withdraw your signature page.

Please note that the Omega PRP Organized Group ("OPOG") filed a lawsuit on February 27, 2004, in the United States Central District of California Western Division against PRPs at the Omega Site for reimbursement of cleanup costs. Defendants to this lawsuit will be served within the next three months. If you settle your potential liability with U.S. EPA, you will not be subject to this lawsuit.

If you have any questions, please contact the toll-free Omega information line at 1-888-635-1524.

Sincerely,



Thanne Cox

Enclosures: Administrative Order on Consent Revised Signature Page
Settlement Cost Summary
Revised Omega *De Minimis* Settlement Offer Letter

cc: OPOG Steering Committee
OSVOG
Linda Ketellapper, EPA

Settlement Cost Summary

Darner Motor Sales, Inc. for Darner Chrysler

The payment required to join this settlement will depend upon the settlement option chosen. Please see the enclosed letters* for explanations of the settlement options and payment instructions. **Do not enclose a check with your signature page; please wait until you receive a letter with payment instructions.**

OPTION A

If Darner Motor Sales, Inc. selects the Option A settlement option, its payment will be:

3.1697 tons x \$12,632 per tons =

\$40,039

OPTION B

If Darner Motor Sales, Inc. selects the Option B settlement option, its payment will be:

3.1697 tons x \$9,678 per ton =

\$30,676

* Options A and B are explained in detail in the cover letter to this document entitled "Revision to Omega Chemical Superfund Site *De Minimis* Settlement Offer - Settlement Options" dated August 11, 2004, and in the enclosed U.S. EPA letter entitled "Revised Omega *De Minimis* Settlement Offer" dated August 10, 2004.

Omega De Minimis Administrative Order on Consent Revised Signature Page

Darner Motor Sales, Inc. for Darner Chrysler

_____, by the duly
[Respondent]

authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof, and selects one of the following settlement options, as provided in the Administrative Order on Consent:

YOU MUST SELECT ONE OF THE FOLLOWING:

- ☐ **OPTION A** (\$12,632 per ton)*
☐ **OPTION B** (\$9,678 per ton)*

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATED: _____

Mailing name and address for this Respondent, or for his, her or its agent for service of process (please print):

NAME: _____

TITLE: _____

ADDRESS: _____

DATED: _____

* Options A and B are explained in detail in the cover letter to this document entitled "Revision to Omega Chemical Superfund Site *De Minimis* Settlement Offer - Settlement Options" dated August 11, 2004, and in the enclosed U.S. EPA letter entitled "Revised Omega *De Minimis* Settlement Offer" dated August 10, 2004.

De Minimis Revised Offer Letter

**Omega Chemical Superfund Site
Settlement Cost Summary**



FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone: 901-369-3600

8/13/2004

Dear Customer:

Here is the proof of delivery for the shipment with tracking number **640808411939**. Our records reflect the following information.

Delivery Information:

Signed For By: R.PONCE DE LEON



Delivery Location: 837 W MAIN ST

Delivery Date: August 12, 2004

Delivery Time: 1304

Shipping Information:

Tracking No: 640808411939

Ship Date: August 11, 2004

Recipient:

JOEL O. DARNER, II, PRESIDENT
DARNER MOTOR SALES, INC.
837 WEST MAIN STREET
MESA, AZ 85201
US

Shipper:

OMEGA
SAIC
1404 FRANKLIN ST.
OAKLAND, CA 94612
US

Shipment Reference Information:

06-5026-01-0506-000

Thank you for choosing FedEx Express. We look forward to working with you in the future.

FedEx Worldwide Customer Service
1-800-Go-FedEx®
Reference No.: R2004081300142926031